

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BALFOUR BEATTY CONSTRUCTION, LLC,
and MILESTONE METALS, INC.,

Plaintiffs,

v.

CASE NO.: 4:17-cv-02477

LIBERTY MUTUAL INSURANCE
COMPANY,

Defendant.

NOTICE OF REMOVAL

Defendant Liberty Mutual Fire Insurance Company, incorrectly named as Liberty Mutual Insurance Company (“Defendant”), pursuant to 28 U.S.C. §§ 1332, 1441(a), and 1446, with full reservation of all defenses, hereby removes this action from the 129th Judicial District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division. In support of this Notice of Removal, Defendant states as follows:

I. State Court Suit and Service

1. On or about June 28, 2017, Plaintiffs Balfour Beatty Construction, LLC and Milestone Metals, Inc. filed an Original Petition instituting this lawsuit in the 129th Judicial District Court of Harris County, Texas, assigned Cause No. 2017-43001. A true and correct copy of the executed process in the case, consisting of the Citation directed to Defendant, the executed return of service, and the attached Plaintiffs’ Original petition, is attached hereto as **Exhibit A**. Defendant was served on July 13, 2017. Defendant filed its answer in state court on August 7, 2017. A true and correct copy of Defendant’s answer is attached hereto as **Exhibit B**.

No orders have been signed by the state court judge. A copy of the state court docket sheet is attached as **Exhibit C**.

II. Grounds for Removal: Diversity

2. This Court has subject-matter jurisdiction over this removed action pursuant to 28 U.S.C. § 1332. This claim could have been originally filed in this Court pursuant to 28 U.S.C. § 1332, as the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is between citizens of different States and/or between a citizen of a State and one or more citizens or foreign subjects of a foreign state and/or between citizens of different States in which one or more citizens or subjects of a foreign state are additional parties.

3. Defendant Liberty Mutual Fire Insurance Company, incorrectly named as Liberty Mutual Insurance Company, is incorporated in the State of Wisconsin and has its principal place of business in the State of Massachusetts. Liberty Mutual Insurance Company, incorrectly named as the defendant in this case,¹ is incorporated in and has its principal place of business in the State of Massachusetts.

4. Plaintiff Balfour Beatty Construction LLC is a limited liability company organized under the law of the state of Delaware and has its principal place of business in New Jersey or Dallas. Its members are citizens of New Jersey and/or of one or more State others than Massachusetts and Wisconsin and/or are citizens or subjects of a foreign state. Balfour Beatty Construction, LLC is a citizen of States other than the states of Wisconsin and Massachusetts and/or is a citizen of a foreign state.

5. Plaintiff Milestone Metals, Inc. is incorporated in and has its principal place of business in Texas.

¹ The insurance policy made the basis of Plaintiffs' claims was issued by Liberty Mutual Fire Insurance Company, not Liberty Mutual Insurance Company.

6. No plaintiff is a citizen of any state of which any defendant is a citizen. There is complete diversity of citizenship. The amount in controversy exceeds \$75,000. In their state court Original Petition, Plaintiffs allege that the insurance claim made the basis of their claim against Defendant was “in the amount of \$686, 976.00.”

III. Timeliness of Removal and Consent to Removal

7. Removal of this case is timely, as it has been less than 30 days since Defendant was served with Citation and a copy of Plaintiff’s Original Petition. Defendant is the only defendant and obviously consents to the removal of this case.

IV. Attachments

8. Defendant copies of all process, pleadings and orders served upon it in state court as required by 28 U.S.C. § 1446(a) and any additional attachments required by LR 81, as follows:

Exhibit no.	Description
A	Executed Service of Process upon Defendant, consisting of Citation addressed to Defendant, executed return of service, and a copy of Plaintiff’s Original Petition attached to the Citation
B	A true and correct copy of Defendant’s state court original answer
C	A copy of the state court docket sheet
D	An index of all matters being filed with this Notice of Removal
E	A list of all counsel of record, including addresses, telephone umbers and parties represented

Respectfully submitted,

By: /s/J. Mark Kressenberg
J. MARK KRESSENBERG

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CERTIFICATE OF SERVICE

On this 11th day of August, 2017, a true and correct copy of the foregoing, including all exhibits thereto, was served on the following counsel of record via e-mail and certified mail, return receipt requested:

R. Brent Cooper
Tarron L. Gartner-Ilai
Cooper & Scully, P.C.
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Dallas, Texas 75202

/s/J. Mark Kressenberg
J. Mark Kressenberg